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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sakar International Inc.

Serial No. 76570201

Joseph Sutton of Ezra Sutton, P.A. for Sakar International,
Inc.

Katherine Stoides, Trademark Examining Attorney, Law Office
101 (Ronald R. Sussman, Managing Attorney).

Before Seeherman, Holtzman and Walsh, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Sakar International Inc. has appealed from the final
refusal of the Trademark Examining Attorney to register
OPTI VISION, in standard character form, for "camera
lenses, digital cameras, and video camera accessories,
namely, video camera lenses, bags for video cameras, lights
for use on video cameras, all sold in electronics stores to

amateur consumers and photographers.”¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant’s mark so resembles the mark OPTIVISION, previously registered for “computer hardware and software for use in image compression or decompression, video compression or decompression, video editing, and optical networking applications”² that, if used on applicant’s identified goods, it is likely to cause confusion or mistake or to deceive.

The appeal has been fully briefed; applicant did not request an oral hearing.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or

¹ Application Serial No. 76570201, filed January 16, 2004, and asserting a bona fide intention to use the mark in commerce.

² Registration No. 2007534, issued October 15, 1996; Section 8 & 15 affidavits accepted and acknowledged.

services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The marks at issue are OPTI VISION and OPTIVISION. They are obviously identical in pronunciation and connotation. Although applicant's mark is presented as two words, and the cited mark is presented as one, the presence or absence of a space between the prefix OPTI and the word VISION does not distinguish the marks as this difference is not likely to be noted or remembered by consumers. Under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. *Dassler KG v. Roller Derby Skate Corporation*, 206 USPQ 255 (TTAB 1980). Accordingly, the marks are virtually identical in appearance, and they are identical in commercial impression. Applicant does not contend otherwise. This factor of the similarity of the marks strongly favors a finding of likelihood of confusion.

The greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the applicant's goods or services and the registrant's goods or services that is

required to support a finding of likelihood of confusion. In re Opus One Inc., 60 USPQ2d 1812, 1815 (TTAB 2001). If the marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion. In re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983).

In order to demonstrate that the goods are related, the Examining Attorney has submitted evidence retrieved by the Google search engine. We note that the Examining Attorney has submitted only pages from the search summary, not from the websites themselves. Applicant has pointed out that these pages show only the titles and excerpts from the actual websites. Applicant claims that "the excerpts and titles, taken out of context of their respective web sites, do not explain or establish any relationship between Applicant's goods and the registrant's goods." Brief, p. 2.

We agree that most of the excerpts listed in the pages of search results have limited probative value. It appears that the excerpts show only portions of the website in which key words were found, and that these portions have been joined together in the excerpts, with ellipses between the phrases. For example, under the title "Tom's **Hardware**

Guide Video: Four 5-Megapixel Cameras in Review..." is the excerpt "...managed to never come across a **digital camera** in the ... or TIFF, size in pixels and **compression** level), the ... Computer **Hardware**...." We point out that the ellipses and the boldface type are in the text as it appears in the search results page; it appears from the words that are shown in bold type throughout the submission that "hardware," "software," "digital camera" and "compression" were words that were searched.

We are compelled to comment on the Examining Attorney's decision to submit only Google search results summary. The Board has previously stated, and has reiterated in the TTAB Manual of Procedure, that "a search result summary from a search engine, such as Yahoo! or Google, which shows use of a phrase as key words by the search engine, is of limited probative value. ...Use in a search summary may indicate only that the two words in an overall phrase appear separately in the website literature." TBMP §1208.03. See also *In re Fitch IBCA Inc.*, 64 USPQ2d 1058 (TTAB 2002). In light of the Board's clearly expressed dissatisfaction with search result summaries, we are at a loss to understand why the Examining Attorney chose to submit thirteen pages of such a summary,

and yet not submit any pages from the various websites that the search identified.

Despite this failure by the Examining Attorney, we still find that a viable relationship between the goods exists. Software for video editing (as identified in the cited registration) and the video camera accessories (video camera lenses, bags for video cameras, lights for use on video cameras) identified in applicant's application are obviously complementary products. A person who owns the software to edit his videos might well purchase video camera accessories for his video camera, and vice versa. Similarly, computer hardware and software for use in image compression or decompression is used in conjunction with digital cameras, as the image size and the amount of memory that is used for storage of images are interrelated. In this connection, we take judicial notice of the following encyclopedia excerpt and dictionary definitions:³

Most digital cameras permit the
photographer to select a "capture"
resolution, which can later be modified
with the computer and the editing
program, but the photographer must also

³ Encyclopedia of 20th-Century Technology, © 2005. Microsoft Computer Dictionary (5th ed. 2002). The Board may take judicial notice of encyclopedia entries and dictionary definitions. See TBMP §1208.04; *In re Broyhill Furniture Industries Inc.*, 60 USPQ 2d 1511, 1514 n. 5 (judicial notice taken of The Encyclopedia of Furniture; *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

consider the amount of camera system memory the image will consume. If a preferred resolution setting will utilize too much memory, it may be necessary to select a higher image compression to reduce the file size.

Early digital cameras used internal or "onboard" memory for file storage, requiring the periodic transfer of images to a computer after the memory was filled before additional pictures could be taken. This limitation was solved by the advent of removable memory devices, such as cards or disks.

Image compression: The use of a data compression technique on a graphical image. Uncompressed graphics files tend to use up large amounts of storage, so image compression is useful to conserve space.

Video compression: Reduction of the size of files containing video images stored in digital form....

Further, some of the search summaries submitted by the Examining Attorney show, in a single phrase, the connection between digital cameras and computer hardware and software. See, for example:

...Based on an optimized software and hardware reference design for both image capture and compression, the digital camera kit features two Athena A7...
www.athena-group.com/press%20releases/digitalcamkit.htm-16k

Digital camera footage is usually
easier to transfer to your PC
[www.fluffbucket.com/othettutorials
/video/camera.htm](http://www.fluffbucket.com/othettutorials/video/camera.htm)

Despite the complementary nature of applicant's and registrant's goods, applicant argues that there is no likelihood of confusion because, by the very nature of registrant's goods as identified in the cited registration--computer hardware and software for use in image compression or decompression, video compression or decompression, video editing, and optical networking applications--registrant's goods would be purchased and used only by professional photographers. Applicant's goods, on the other hand, are limited by the identification to being "sold in electronics stores to amateur consumers and photographers." Thus, according to applicant, applicant's and the registrant's goods travel in different channels of trade and are sold to different classes of consumers.

Although applicant claims that the registrant's goods would be purchased only by professional photographers, this is not borne out by the record. The goods as they are identified in the cited registration are not limited to use by professional photographers, nor are the identified software items that could only be used by professionals.

Digital cameras, by their very nature, use computer hardware and software and, unlike simple disposable cameras, digital cameras are often used in conjunction with computers. For example, it is common knowledge that consumers store digital photographs on their computers, and email photographs taken by their digital cameras. Software that compresses the image files and increases the storage space on their computers is a likely accessory to use for such computer storage. It is also reasonable to assume that consumers would buy software to increase the storage space for photos on their digital cameras.

Even if we were to assume that registrant's goods would be purchased and used only by professional photographers, we are not persuaded that the limitation in applicant's identification means that professional photographers would not encounter applicant's goods. Professional photographers may shop in electronics stores, and thus they could see applicant's digital cameras, bags for video cameras, etc. Although applicant's goods are not directed to professional photographers, such a photographer might still wish to buy a "consumer" digital camera or video camera bag or the like, either for himself or as a gift for a friend, or he might accompany a friend to advise on the purchase of the product, and look at cameras and

other products that are marketed to the "amateur consumer" or amateur photographer. It is obvious from applicant's identification that applicant recognizes that electronics stores market their goods to the public at large. These stores do not prohibit professional photographers from entering, nor do salespeople require information that their customers are amateur rather than professional photographers before they will sell cameras to them.

Thus, despite the limitation in applicant's identification, professional photographers could still encounter applicant's goods. Such professional photographers, familiar with the registrant's hardware and software for use in image and video compression or decompression, video editing, and optical networking applications, are likely to believe, upon seeing virtually the identical mark on such related goods as digital cameras and video camera accessories and the like, that the goods emanate from the same source, even if they thought that one set of products was designed for the professional market and one for the general consumer market. The fact that the goods may be marketed in different trade channels would not avoid such confusion. Nor would confusion be avoided by the fact that professional photographers are sophisticated

purchasers, given the use of virtually identical marks, and the relatedness of the goods.

"Amateur photographers," as referenced in applicant's identification, include all photographers who do not do photography as a business. Such consumers would include people who are knowledgeable about photography and photography equipment and who would use some of the equipment that professionals also use. Such consumers, although "amateurs," are very likely to use computer hardware and software for use in image and video compression or decompression and video editing.

Because of the near-identity of the marks, the viable relationship between the goods, and the common classes of consumers for the goods, we find that applicant's use of its mark for its goods, as identified, is likely to cause confusion with the cited mark. In reaching this conclusion, we have assumed that the goods are not sold in the same channels of trade because we do not have any evidence that computer hardware and software for use in image and video compression, etc. is sold in electronics stores, the channel of trade to which applicant's goods are limited. However, even though that factor may favor applicant, when all the applicable du Pont are considered,

Ser No. 76570201

the factors favoring a finding of likelihood of confusion far outweigh those that do not.

Decision: The refusal of registration is affirmed.